

Federal Court



Cour fédérale

Date: 20210629

Docket: IMM-3042-20

Citation: 2021 FC 684

Ottawa, Ontario, June 29, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

MARSELA NUNAJ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Marsela Nunaj is a citizen of Albania and a permanent resident of Canada. Ms. Nunaj sought to sponsor her parents to Canada as members of the family class, but the sponsorship application was refused because she did not meet the minimum necessary income (MNI) requirements under section 133(1)(j)(i) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. Ms. Nunaj appealed the visa officer's (Officer) decision to the

Immigration Appeal Division (IAD). On appeal, Ms. Nunaj conceded that she did not meet the MNI requirements, and asked that the IAD exercise discretion to allow the appeal based on humanitarian and compassionate (H&C) considerations.

[2] On this application for judicial review, Ms. Nunaj challenges the IAD's determination that H&C considerations were insufficient to merit relief from the MNI requirements. She submits the IAD's decision is unreasonable in that the IAD erred by failing to properly consider the H&C factors, and by ignoring evidence in the record.

[3] For the reasons below, Ms. Nunaj has not established that the IAD's decision is unreasonable. This application for judicial review is dismissed.

II. Issue and Standard of Review

[4] The sole issue on this application for judicial review is whether the IAD reasonably determined that H&C considerations were insufficient to merit relief from the MNI requirements of the *IRPR*.

[5] The Supreme Court of Canada set out the guiding principles for reasonableness review in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12-13, 75 and 85.

In applying the reasonableness standard, the Court must ask whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility: *Vavilov* at para 99.

A reasonable decision is based on an internally coherent and rational chain of analysis, and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

The party challenging the decision bears the onus of demonstrating that it is unreasonable:
Vavilov at para 100.

III. Analysis

[6] As noted above, Ms. Nunaj submits the IAD erred by failing to properly consider the H&C factors that she had presented, and by ignoring the evidence. She argues the IAD focused on the lack of documentary evidence and erred by assigning little or no weight to testimony about her close relationship with her parents, taking a one-sided view of the evidence. She submits that it was an error for the IAD to disregard significant evidence that contradicted its findings without explaining why the evidence was not relevant or reliable: *Salguero v Canada (Citizenship and Immigration)*, 2009 FC 486 at para 13.

[7] According to Ms. Nunaj, the IAD improperly discounted her evidence about the relationship with her parents and the plan for the parents to support her in Canada and help care for her children, based on the parents' lack of support in the past. She submits that she testified about the psychological and financial hardship that she would face without the support of her parents, in view of the breakdown of her marriage and her struggles as a single mother.

[8] Ms. Nunaj submits the IAD breached procedural fairness by relying on her testimony from a refugee proceeding about the strained relationship with her parents, as summarized in a decision of the Refugee Protection Division of the Immigration Board of Canada dated January 21, 2014 (RPD Decision). She submits the RPD Decision was confidential, and should not have been disclosed by the respondent or entered as part of the record in the IAD proceeding.

[9] Furthermore, Ms. Nunaj submits the IAD ignored her evidence that she had rebuilt the relationship with her parents. She testified that while she did not have a good relationship with her parents when she came to Canada, the birth of her second son changed the course of the relationship. Ms. Nunaj states that more than six years had passed since she had given testimony in her refugee claim, and there was no current evidence before the IAD that her parents were not supportive of her.

[10] Ms. Nunaj submits the IAD also failed to give appropriate consideration to the best interests of the children (BIOC) in assessing the H&C factors, as she had testified that her young children have an especially close relationship with their grandparents, and the children would benefit from the permanent presence of their grandparents in Canada: *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909.

[11] Ms. Nunaj submits that the IAD unreasonably found she was not forthcoming in her testimony based on one exchange, when she explained that she had misunderstood the question.

[12] Lastly, Ms. Nunaj submits the IAD unreasonably relied on a lack of documentary evidence to support her testimony, after denying her request to submit additional documents after the hearing.

[13] I am not persuaded that the IAD committed a reviewable error in considering whether the H&C factors in Ms. Nunaj's appeal warranted special relief. It is within the IAD's discretion and expertise to assess and evaluate the evidence, and it is not the Court's role on judicial review to reweigh and reassess the evidence: *Vavilov* at paras 125-126; *Aguebor v Canada (Minister of*

Employment and Immigration), [1993] FCJ No. 732, 160 NR 315 (CA); *Brar v Canada (Minister of Employment & Immigration)*, 1986 CarswellNat 1379, [1986] FCJ No. 346 (CA).

[14] Given the parents' lack of support in the past, it was well within the IAD's discretion to discount the weight of Ms. Nunaj's testimony that her parents would comply with the plan to support her financially and provide care for her children so that she could work. The IAD considered Ms. Nunaj's testimony that she had reconciled with her parents; however, the IAD found that Ms. Nunaj did not provide any details of the reconciliation, and noted that her parents did not testify before the IAD or submit letters in support of her appeal. The IAD was troubled that the relationship with Ms. Nunaj's parents had not been a supportive one when Ms. Nunaj had been forced to make a refugee claim in a foreign country due to an abusive husband—a time when she had great need for their support—and the record did not include any evidence from the parents that would indicate a willingness to provide support to Ms. Nunaj or care for her children. The IAD noted Ms. Nunaj's testimony that her parents had never tried to visit her in Canada, and reasonably considered the lack of any corroborative evidence of the relationship between her parents, herself and the children, such as correspondence with her parents or records of telephone calls or messages. As the respondent points out, Ms. Nunaj testified that the relationship with her parents improved after her son was born in March 2014, which was two months after she had testified at the RPD hearing that her parents had disowned her. Since then, Ms. Nunaj's parents had not visited her or met the children, and there was no evidence of the parents' efforts to help her, financially or otherwise.

[15] Similarly, with respect to the BIOC, while Ms. Nunaj testified that her children would benefit from their grandparents' presence in Canada, the IAD reasonably found that Ms. Nunaj

had provided little evidence of her parents' relationship with the children. It was open to the IAD to find, based on the insufficiency of the evidence, that the BIOC was not a particularly compelling factor in the appeal.

[16] The IAD noted that considerations for H&C relief included the extent of the shortfall in Ms. Nunaj's income as compared to the MNI, the nature and strength of the relationship with Ms. Nunaj's parents, the reasons for the sponsorship, the need for family support, and the BIOC. The IAD considered these and other factors, and reasonably considered and weighed the evidence. Ms. Nunaj has not established that the IAD erred in its assessment of her testimony, taking into account the lack of documentary evidence. Ms. Nunaj did not point to significant evidence that the IAD overlooked, or that contradicted the IAD's findings.

[17] I agree with the respondent that the IAD did not breach procedural fairness by admitting the RPD Decision and considering Ms. Nunaj's testimony as summarized therein. The respondent's counsel served and filed the RPD Decision a week before the IAD hearing, together with a letter explaining its relevance to the IAD proceeding. At the outset of the hearing, before marking the documents as an exhibit, the IAD member asked Ms. Nunaj's counsel if she had received the letter and the RPD Decision, and if she intended to raise an objection. Ms. Nunaj's counsel confirmed receipt, and stated there was no objection.

[18] Also, I agree with the respondent that the IAD did not err by refusing Ms. Nunaj's request to provide documents after the hearing. The IAD noted that Ms. Nunaj had been reminded to submit her documentary evidence in advance of the appeal after missing an extended deadline to do so. The explanation that was provided to the IAD—that one of the children had tonsil surgery on February 24, 2020—does not explain a failure to submit

documents between the notice that was sent in August 2019 and the hearing held in March 2020. On this application for judicial review, Ms. Nunaj does not point to any other evidence explaining why she was unable to file documentary evidence prior to the date of the hearing, or the efforts that she undertook to collect evidence prior to the hearing.

[19] Ultimately, the IAD's decision to dismiss the appeal turned on the insufficiency of the evidence required to discharge Ms. Nunaj's onus. In my view, the IAD reasonably dismissed the appeal on the basis that Ms. Nunaj had not demonstrated sufficient H&C considerations, taking the BIOC into account, to warrant relief from the MNI requirements of the *IRPR* in light of all the circumstances of her case.

IV. **Conclusion**

[20] Ms. Nunaj has not demonstrated that the IAD's decision is unreasonable, and accordingly, this application for judicial review is dismissed.

[21] Neither party proposed a question for certification. There is no question to certify in this case.

JUDGMENT in IMM-3042-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question for certification.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3042-20

STYLE OF CAUSE: MARSELA NUNAJ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: APRIL 19, 2021

JUDGMENT AND REASONS: PALLOTTA J.

DATED: JUNE 29, 2021

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